

CULTURAL RESOURCES APPENDIX B

The BLM and Split Estate properties

The BLM manages approximately 58 million acres of federal mineral estate beneath privately-owned surface, known as split estate. The BLM is responsible for the leasing and development of those minerals through various laws, regulations, and procedures. The BLM is also required by Section 106 of the National Historic Preservation Act, which is in Title 54 (54 U.S.C. § 306108) to take into account the effects that leasing and development of oil and gas and other minerals have on cultural resources.

Legal Authority

The National Historic Preservation Act of 1966 (as amended through 2000) (16 U.S.C. § 470h-2) found within Title 54 (54 U.S.C. § 306108) provides legal authority for the BLM concerning cultural resources on split-estate lands.

The National Historic Preservation Act established the National Register of Historic Places (NRHP). This program is managed by the National Park Service. It is the nation's official list of cultural resources worthy of preservation.

"Section 106 of the National Historic Preservation Act now located within Title 54 (54 U.S.C. 306108) requires federal agencies to take into account the effects of their actions on cultural resources that are eligible for or listed on the National Register." The National Register refers to the NRHP.

Regulations which implement Section 106 lay out a process that federal agencies must follow when they are considering an action that may affect cultural resources. Federal agencies must determine the Area of Potential Effect (APE) and identify historic properties within that area. They must determine if the resources are eligible for the NRHP and resolve project effects. They must avoid, minimize or mitigate any adverse effects on NRHP listed or eligible resources. Section 106 requires a consultation process and agencies must complete the process before approving the action.

Federal Agency Responsibilities

The BLM must determine whether a proposed federal action, such as approving oil and gas development, may have an effect on historic properties located on federal lands and on private surface overlaying federal minerals. Unless an area has already been surveyed to current standards, a Class III inventory is necessary to accurately identify cultural resources. The survey is typically limited to the general area that may be affected by the proposed development action and an adjacent buffer zone.

Cultural resource surveys are conducted by professionally trained and permitted archaeologists. Most surveys are surface surveys. Occasionally subsurface testing is needed to identify or evaluate cultural resources. Identified cultural resources are documented. They are then evaluated for their NRHP eligibility.

Important sites eligible under only NRHP Criterion D that cannot be avoided and would be disturbed by oil and gas development may have to be fully excavated to recover scientific information that would be lost, if that is what is decided through consultation. The private surface owner can request a copy of the cultural resources information obtained by the excavation. All cultural resources and artifacts located on private surface are the property of the private surface owner. The BLM works to encourage coordination and cooperation among all parties that have rights and responsibilities in split estate situations.

Most of the information in this Appendix is from: BLM Brochure Split Estate: Cultural resource requirements on private surface-federal minerals for oil and gas development - 2008: BLM/WO/GI-08/014+8131.